

REMARKS

This Amendment is submitted in reply to the final Office Action mailed on June 4, 2007. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge \$120.00 for the petition of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-568 on the account statement.

Claims 1-20 are pending in this application. In the Office Action, Claims 1-20 are rejected under 35 U.S.C. §103. In response, Claims 1 and 20 have been amended and Claim 9 has been canceled. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-16 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over GB 2027662 to Marek ("*Marek*"). Claims 17-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Marek in view of U.S. Patent No. 6,777,007 to Cai ("*Cai*"). Applicants respectfully disagree with and traverse these rejections for at least the reasons set forth below.

As currently amended, independent Claim 1 recites, in part, a package comprising a water-soluble beverage material in an amount sufficient to form the beverage and a filler, wherein the ratio of water-soluble material to filler is between 1:0.5 and 1:10 by volume. The amendment is supported in the specification at, for example, page 5, lines 20-22. The water-soluble beverage material is intended to provide the primary beverage ingredient for the beverage by thoroughly mixing with water during an extraction process. The water-soluble material can comprise, for example, soluble coffee powder, milk powder, a creamer substitute powder, chocolate powder and mixtures thereof. See, specification, page 5, lines 18-19. For good dissolution of the water-soluble material and mixing with water, the pressure in the package must be maintained at substantially stable levels throughout extraction, which is controlled by the filler. The filler comprises a water insoluble material that can comprise, for example, cellulose, fiber, fresh ground coffee, spent ground coffee and mixtures thereof, and is used to maintain the proper volume and size of the package and prevent collapsing in the extraction chamber. See, specification, page 5, lines 16-19. In contrast, Applicants respectfully

submit that *Marek* fails to disclose or suggest every element of independent Claim 1 and dependent Claims 2-8 and 10-19 that depend therefrom.

Marek fails to disclose or suggest a package comprising a water-soluble beverage material in an amount sufficient to form the beverage and a filler, wherein the ratio of water-soluble material to filler is between 1:0.5 and 1:10 by volume as required, in part, by currently amended Claim 1. For example, *Marek* is said to disclose a filter package comprising ground coffee and a neutral anti-agglomerating material. The anti-agglomerating material prevents the ground coffee from agglomerating during brewing. Nevertheless, *Marek* fails to disclose or suggest wherein the ratio of water-soluble material to filler is between 1:0.5 and 1:10 by volume because the anti-agglomerating material and the ground coffee filter package of *Marek* are water-insoluble materials. In fact, Applicants' specification teaches that the filler (e.g., the water insoluble material) can comprise cellulose, fiber, fresh or spent ground coffee and combinations thereof. Although the Patent Office alleges that *Marek* discloses or suggests a water-soluble beverage material because the package may include a product that is "replaced wholly or partly" by a coffee substitute or coffee additive, see, office action, page 2, lines 25-27, Applicants respectfully submit that any possible trace amount of a water-soluble beverage material contained in the filter package of *Marek* is not present in an amount wherein a ratio of water-soluble material to filler is between 1:0.5 and 1:10 by volume as required, in part, by the present claims.

As discussed above, the filler of the present claims has several functions: 1) improving the foam generation, and 2) avoiding collapsing of the package when the water-soluble material has left the filter package. In contrast, *Marek* teaches that the function of the anti-agglomerating material is to prevent or reduce contact between the grains of ground coffee, which results in agglomeration when the coffee bag is soaked in hot water (e.g., similar to tea bags).

In contrast to the coffee bag of *Marek*, the beverage portioned package of the present claims is designed and constructed to be brewed by water being injected under pressure. Applicants believe that it has not been possible to efficiently brew soluble material in this manner, e.g., soluble coffee powder, because the beverage portioned package unavoidably collapses in the brewing machine resulting in poor pressure within the package and a beverage having a very poor taste and quality. Furthermore, the amount of soluble powder needed for a cup of coffee in a beverage portioned package is relatively low. As a result, the present

invention proposes a solution where water-soluble material can be effectively brewed in beverage portioned packages and dispensed therefrom into a container.

As currently amended, independent Claim 20 recites, in part, a method of making a foamed beverage from a soluble beverage-forming material in a beverage portioned package that is processed in an extraction device, the method comprising providing the package with a water-soluble beverage material in an amount sufficient to form the beverage and a filler therein, and forming a pressure resistant bed in the filler in the packaging. The amendment is supported in the specification, for example, at page 3, line 31-page 5, line 5. The pressure resistant bed is meant to be a relatively homogenously distributed mass of filler in the content of the packaging and is used in order to avoid creating privileged water paths or holes after dissolution of soluble material. Such paths or holes would indeed cause a significant pressure drop with consequence on dissolution and foam generation. See, specification, page 4, lines 6-8.

In contrast, Applicants respectfully submit that *Marek* is silent as to the use of pressure or a pressure resistant bed. Instead, *Marek* teaches the use of materials that act as a filler to prevent contact between the coffee grains to prevent agglomeration or caking of the grains. See, *Marek*, page 1, lines 68-74. *Marek* emphasizes that these materials keep the coffee grains “physically separate or free or loose.” *Id.* at line 74. This is in direct contrast to the present invention, which uses pressure to create a pressure resistant bed in order to avoid creating privileged water paths or holes that would allow water to seep through the pressure resistant bed thereby creating a significant pressure drop within the package.

For at least these noted reasons, Applicants respectfully submit that *Marek* does not teach, disclose, or even suggest all of the elements of independent Claims 1 and 20 and dependent Claims 2-8 and 10-16 that depend from Claim 1 and thus, fails to render the presently claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-8, 10-16 and 20 be reconsidered and the rejection be withdrawn.

Applicants also respectfully submit that there is no suggestion or motivation to combine the *Marek* and *Cai* to arrive at Claims 17-19 because each reference is directed to devices having entirely different modes of operation. For example, *Marek* is directed to a coffee bag that can be dipped in hot water similar to a bag of tea. On the other hand, *Cai* is directed to a pod designed to work with a beverage extraction device. The pod's construction is sturdy enough to withstand

high pressure injection and extraction of a fluid into and out of the pod. The Patent Office has provides no evidence that the coffee bag of *Marek* is capable of withstanding the high pressure injections and extractions of fluids from a beverage extraction device or is even capable of working in this manner. Consequently, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

However, even if modification of the cited references is proper, Appellants respectfully submit that the references are deficient with respect to the present claims because they fail to disclose each and every element of the presently claimed subject matter. Applicants respectfully submit that both *Marek* and *Cai* fail to disclose a package comprising a water-soluble beverage material in an amount sufficient to form the beverage and a filler, wherein the ratio of water-soluble material to filler is between 1:0.5 and 1:10 by volume as required, in part, by the present claims.

For at least the reasons discussed above, Applicants respectfully submit that *Marek* fails to disclose or suggest every element of Claims 1 and 20 and Claims 2-8 and 10-16 that depend from Claim 1. Moreover, Applicants respectfully submit that the combination of *Marek* and *Cai* is improper and therefore does not render Claims 17-19 obvious in view of same.

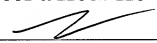
Accordingly, Applicants respectfully request that the rejections of Claims 1-8 and 10-20 under 35 U.S.C. §103 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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Dated: October 2, 2007